

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

Cohen
2-3927

FILE: B-208925

DATE: January 4, 1983

MATTER OF: Association of Soil and Foundation
Engineers

DIGEST:

Brooks Act procedure for selecting architectural or engineering firms does not apply to a procurement where the prime contractor itself does not have to be an engineering firm to perform the contract successfully, even though professional engineers will be used to perform part of the work.

The Association of Soil and Foundation Engineers (ASFE) protests the Department of the Interior's use of standard competitive procedures to secure soil boring sampling and testing needed to provide the State of Ohio with recommendations about stabilizing a site known as the Wiedemeyer earthslip. Interior awarded the contract under formally advertised solicitation No. K5120136 to the low (\$18,716) responsive, responsible bidder. ASFE contends that the services should have been secured through the special procedures prescribed in the Brooks Act for the Federal Government's procurement of professional architect-engineer (A-E) services. 41 U.S.C. § 541 et seq. (1976). The act declares it to be Federal policy to issue public announcements of all requirements for A-E services and to negotiate contracts for the services on the basis of demonstrated competence and qualifications; the procedures do not include price competition.

We deny the protest.

The clear majority of the actual contract work, described in sections 1 and 2 of the solicitation specifications, involves drilling, installing piezometers (instruments for measuring pressure), and collecting soil and rock samples. ASFE does not suggest that these efforts constitute professional A-E services under the Brooks Act--while they may be services

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that professional A-E firms often perform, they are not unique to professional A-E firms.

Instead, ASFЕ suggests the Brooks Act applies to the entire procurement essentially because the IFB requires, in section 3, certain "Engineering Services and Testing." Section 3 states that the contractor must provide a professional engineering geologist "registered, if required by the State of Ohio, or a registered professional civil soils engineer to layout borings, record surface elevations, check out existing utilities, and supervise drilling * * *." The engineer also would approve drilling locations and could direct the depths for taking samples. The section further states:

"The contractor shall provide an engineering report which includes a reproducible site map * * *, a review of the field logs and borings, results of laboratory testing, a narrative discussion of the slide investigation problem, recommendations for priority repairs, recommendations for design load cases, and recommendations for soil design parameters for the various soil stratas encountered. Five stamped and signed copies of the final engineering report shall be provided to the Contracting Officer."

ASFЕ argues that section 3 not only states a requirement for professional engineering expertise in general, but describes activities for which the laws of the State of Ohio* require particular qualifications and professional registration. In this regard,

*Ohio Revised Code § 4733.01(b) defines "The practice of engineering" to include:

"any professional service, such as consultation, investigation, evaluation, planning, design, or inspection of construction or operation, for the purpose of assuring compliance with drawings or specifications in connection with any public or privately owned public utilities, structures, buildings, machines, equipment, processes, works, or projects

we have stated that in our view the Brooks Act procedures apply when the jurisdiction in which desired services are to be performed requires an A-E firm to meet a certain degree of capability in order to perform them. See Timberland-McCullough, Inc., B-208086, September 24, 1982, 82-2 CPD 273. ASFE also points out that the specification requires "stamped and signed" copies of a final engineering report; ASFE argues that since under Ohio law registered professional engineers are furnished "seals" with which to "stamp" their reports, this specification evidently imposes a professional engineering requirement.

Despite ASFE's assertion that IFB section 3 imposes a clear requirement for a professional engineer, we believe that the specification is somewhat ambiguous on that matter. The first part appears to solicit the services of either a geologist or a professional engineer. Nonetheless, the engineering services described appear to be professional services under Ohio's engineering registration statute, as ASFE argues. Also, the requirement that the "engineering" report be "stamped or signed" reasonably relates to the Ohio statutory provision that ASFE notes.

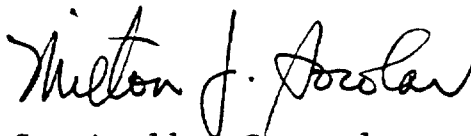
Even if we accept ASFE's view on the section 3 services, however, we do not agree that this particular procurement therefore had to follow Brooks Act procedures. The reason is that the Brooks Act does not require that contracts be awarded to A-E firms merely because architects or engineers might do part of the contract work. See Association of Soil and Foundation Engineers--Reconsideration, B-201395.2, May 6, 1982, 61 Comp. Gen. ___, 82-1 CPD 429. Rather, the act's procedures, and the restriction to A-E firms attached to them, apply to the procurement of services which uniquely or to a substantial or dominant extent

in the proper rendering of which the qualifications [prescribed in] the Revised Code [for a 'professional engineer'] are required to protect the public welfare or to safeguard life, health, or property."

require performance by a professionally licensed and qualified A-E firm. Ninneman Engineering--reconsideration, B-184770, March 9, 1977, 77-1 CPD 171. Moreover, we have held that a contracting agency, within the bounds of sound judgment, is free to decide that a particular award need not be restricted to professional engineering firms, and thus that Brooks Act procedures do not apply, even if the specifications call for the use of engineers. Association of Soil and Foundation Engineers, B-204634, February 2, 1982, 82-1 CPD 77.

Thus, where the services required are not unique to A-E firms, nonprofessional efforts predominate, and there otherwise is no reason to restrict the contract to A-E firms, the Brooks Act does not apply. The predominant efforts here are nonprofessional services: drilling and related services. (Interior advises that "engineering cost" is \$3,650 of the \$18,716 contract price.) We therefore have no basis to conclude that Interior has acted unreasonably in securing the work here through standard competitive procedures.

The protest is denied.

for 
Comptroller General
of the United States